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11 Attorneys for USACM Liquidating Trust

12 **UNITED STATES BANKRUPTCY COURT**
13 **DISTRICT OF NEVADA**

14 In re:

15 USA COMMERCIAL MORTGAGE
16 COMPANY,

17 USA CAPITAL REALTY ADVISORS,
18 LLC,¹

19 USA CAPITAL DIVERSIFIED TRUST
20 DEED FUND, LLC,

21 USA CAPITAL FIRST TRUST DEED
22 FUND, LLC,²

23 USA SECURITIES, LLC,³ Debtors.

24 **Affects:**

25 All Debtors
26 USA Commercial Mortgage Company
27 USA Capital Realty Advisors, LLC
28 USA Capital Diversified Trust Deed Fund, LLC
29 USA Capital First Trust Deed Fund, LLC
30 USA Securities, LLC

31 Case No. BK-S-06-10725-LBR¹
32 Case No. BK-S-06-10726-LBR¹
33 Case No. BK-S-06-10727-LBR²
34 Case No. BK-S-06-10728-LBR²
35 Case No. BK-S-06-10729-LBR³

36 **CHAPTER 11**

37 Jointly Administered Under Case No.
38 BK-S-06-10725 LBR

39 **DECLARATION OF GEOFFREY L.
40 BERMAN IN SUPPORT OF
41 OMNIBUS OBJECTIONS OF
42 USACM TRUST TO PROOFS OF
43 CLAIM BASED UPON
44 INVESTMENT IN THE GRAMERCY
45 COURT LOAN**

46 Date of Hearing: June 15, 2010
47 Time of Hearing: 9:30 a.m.

48 Geoffrey L. Berman declares under penalty of perjury:

49 1. I am an adult person competent to testify in court.
50 2. I make this declaration based upon my personal knowledge, and upon the
51 records USA Commercial Mortgage Company.

52 ¹ This bankruptcy case was closed on September 23, 2008.

53 ² This bankruptcy case was closed on October 12, 2007.

54 ³ This bankruptcy case was closed on December 21, 2007.

1 3. I am the Trustee of the USACM Liquidating Trust (“USACM Trust”), which
2 is an entity created by the Debtors’ Third Amended Joint Chapter 11 Plan of
3 Reorganization (“Plan”), in the jointly-administered bankruptcy cases, In re USA
4 Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States
5 Bankruptcy Court for the District of Nevada.

6 4. In May and June 2004, USACM circulated an Offer Sheet to prospective
7 Direct Lenders soliciting funding for a construction loan to a borrower identified as
8 “Gramercy Court Condominiums.” A copy of the Offer Sheet is attached hereto as
9 **Exhibit B** and incorporated by this reference.

10 5. On June 25, 2004, Borrower made and delivered to various lenders,
11 including the Direct Lenders identified in Exhibit A, a “Promissory Note Secured by Deed
12 of Trust” (the “Note”) and a related “Construction Loan Agreement” (“Loan Agreement”).
13 The Note and Loan Agreement provided for a construction loan with an initial distribution
14 of \$10,462,500 and subsequent distributions that would, if made, bring the total amount of
15 the loan up to \$37,250,000. The loan was intended to fund the construction of a
16 condominium development located in Harris County, Texas.

17 6. The Note is secured by a Deed of Trust, Assignment of Rents, Security
18 Agreement and Fixture Filing (“Deed of Trust”) on real property and improvements
19 thereon, as described in the Deed of Trust.

20 7. The Deed of Trust was recorded on June 30, 2004 in the Official Records of
21 the Harris County, Texas.

22 8. The Note is also secured by a Guaranty given by Tracy Suttles (the
23 “Guarantor”), wherein the Guarantor agreed to pay all indebtedness owed by Borrower
24 related to the Note and all amendments to it.

25 9. In addition to the initial loan of \$10,462,500, USACM originated 14
26 subsequent advances using Direct Lender funding. For each one Borrower and USACM

1 entered into an "Amendment to Deed of Trust" and "Amendment to Loan Documents."
2 The last of such amendments were the Fourteenth Amendment to Deed of Trust and
3 Fourteenth Amendment to Loan Documents. Both were executed by Borrower, through
4 its President Tracy Suttles, on February 8, 2006 and recorded in the official records of
5 Harris County, Texas on February 14, 2006. These final amendments indicate that the
6 total amount funded on the Gramercy Court Loan after the 14th distribution was
7 \$34,384,500.

8 10. According to USACM records, Borrower had, by July 31, 2006, defaulted
9 on the Note. During the bankruptcy case, USACM treated the Direct Lenders with respect
10 to any interim payments by the borrower in accordance with this Court's orders and the
11 confirmed Plan. The USACM Trust does not know the ultimate disposition of the
12 Gramercy Court Loan, the collateral securing that loan or whether the Direct Lenders will
13 be repaid in whole or in part.

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Dated: May 14, 2010

16
17 /s/Geoffrey L. Berman
Geoffrey L. Berman

18 Copy of the foregoing (without exhibits)
mailed by first class
19 Postage prepaid U.S. Mail on
May 14, 2010 to the
20 investors in the Gramercy Court Loan listed
on Exhibit A.

21
22 s/ Leilani Lista
Leilani Lista